April 18, 2007

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: MGT Technical Consulting

Date of Filing: April 4, 2007

Case Number: TFA-0199

On April 4, 2007, MGT Technical Consulting (the Appellant) filed an Appeal from a final determination issued by the Idaho Operations Office (Idaho) of the Department of Energy (DOE). In that determination, Idaho responded to a Request for Information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b), as implemented by the DOE in 10 C.F.R. Part 1004. Idaho released responsive documents but withheld one name from one of the documents under FOIA Exemption 6. This Appeal, if granted, would require Idaho to release that name.

The FOIA requires that documents held by federal agencies generally be released to the public upon request. The FOIA, however, lists nine exemptions that set forth the types of information that may be withheld at the discretion of the agency. 5 U.S.C. § 552(b). Those nine categories are repeated in the DOE regulations implementing the FOIA. 10 C.F.R. § 1004.10(b). The DOE regulations further provide that documents exempt from mandatory disclosure under the FOIA shall nonetheless be released to the public whenever the DOE determines that disclosure is in the public interest. 10 C.F.R. § 1004.1.

I. Background

In an electronic mail message dated November 1, 2006, the Appellant submitted a FOIA request to Idaho for "copies of the abstracts accompanying the proposals [Funding Opportunity DE-PS07-05ID14711,] and for any other non-privileged information that summarizes the subjects, nature and scope of the winning grant proposals." Electronic Mail Message Request dated November 1, 2006, from Luca Gratton, General Manager, MGT Technical Consulting to Nicole Brooks, Idaho. On February 6, 2007, Idaho released an abstract submitted by H-Z Technology, Inc., and stated that it would release other abstracts by Teledyne Energy Systems and Pratt and Whitney Rocketdyne (PWR) by February 26, 2007. On February 22, 2007, Idaho released the abstracts by Teledyne and PWR. Determination Letter dated February 22, 2007, from Nicole Brooks, FOIA Officer,

Idaho, to Luca Gratton (Determination Letter). In releasing the abstracts, Idaho withheld the name of only one individual in all the documents it released. That name was withheld pursuant to 5 U.S.C. § 552(b)(6) (Exemption 6) at the request of PWR. *Id.*

In its Appeal, the Appellant disputes the withholding of information under Exemption 6. The Appellant argues that "any application submission to the cooperative agreement is a de facto authorization by the submitter for the government to collect the information and subject that information to routine uses that are clearly identified in the abbreviated grants notice announcement." Appeal Letter dated March 24, 2007, from Luca Gratton to Director, Office of Hearings and Appeals (OHA), DOE. The Appellant continues that the forms "clearly advise against the submission of privileged or proprietary information." *Id.*

II. Analysis

Exemption 6 shields from disclosure "[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C.§ 552(b)(6); 10 C. F. R. § 1004.10(b)(6). The purpose of Exemption 6 is to "protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Department of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982).

In order to determine whether information may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be invaded by the disclosure of the information. If no privacy interest is identified, the record may not be withheld pursuant to Exemption 6. *Ripskis v. HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984). Second, the agency must determine whether release of the information would further the public interest by shedding light on the operations and activities of the government. *See Hopkins v. HUD*, 929 F.2d 81, 88 (2d Cir. 1991); *Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *FLRA v. Dep't of Treasury Financial Management Service*, 884 F.2d 1446, 1451 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 864 (1990). Finally, the agency must weigh the privacy interests it has identified against the public interest in order to determine whether the release of the information would constitute a clearly unwarranted invasion of personal privacy. *Reporters Committee*, 489 U.S. at 762-770. *See Frank E. Isbill*, 27 DOE ¶ 80,215 (1999); *Sowell, Todd, Lafitte and Watson LLC*, 27 DOE ¶ 80,226 (1999).

A. The Privacy Interest

Idaho determined that there was a privacy interest in the identify of the contractor employee. We agree that a substantial privacy interest exists in the identity of private citizens due to the great potential that a commercial entity could misappropriate a name for commercial purposes. The courts have also reached this conclusion. *See Sheet Metal Workers v. Dep't of Veterans Affairs*, 135 F.3d 891 (3d Cir. 1998) (the disclosure of names,

social security numbers, or addresses of government contractor employees would constitute an unwarranted invasion of personal privacy); *Painting and Drywall Work Preservation Fund v. HUD*, 936 F.2d 1300 (D.C. Cir. 1991) (the release of contractor employees' names and addresses would constitute a substantial invasion of privacy). Therefore, we find that there is a substantial privacy interest in the identity of this contractor employee.

B. The Public Interest

Having established the existence of a privacy interest, the next step is to determine whether there is a public interest in disclosure of the information. The Supreme Court has held that there is a public interest in disclosure of information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *See Marlene Flor*, 26 DOE ¶ 80,104 at 80, 511 (1996). The requester has the burden of establishing that disclosure would serve the public interest. *Flor*, 26 DOE at 80,511 (quoting *Carter v. Dep't of Commerce*, 830 F.2d 388 (D.C. Cir. 1987)). We find that there is a minimal public interest in release of the withheld information. The Appellant has not demonstrated how the disclosure of the name of the non-federal employee will reveal anything of importance regarding the DOE or how it would serve the public interest. Also, revealing the names of private citizens will not contribute significantly to the public's understanding of government activities. Accordingly, we agree with Idaho and find that there is a minimal public interest in the disclosure of the name withheld pursuant to Exemption 6.[*/]

C. The Balancing Test

In determining whether information may be withheld pursuant to Exemption 6, courts have used a balancing test, weighing the privacy interests that would be infringed against the public interest in disclosure. *Reporters Committee*, 489 U.S. at 762; *SafeCard Service v. SEC*, 426 F.2d 1197 (D.C. Cir. 1991). We have concluded that there is a substantial privacy interest at stake in this case. Moreover, we found that there is only a minimal public interest in the release of name of the contractor employee. Therefore, we find that the public interest in disclosure of the name withheld pursuant to Exemption 6 is outweighed by the real and identifiable privacy interest of the named individual.

III. Conclusion

Idaho properly withheld the name of the contractor employee from the PWR abstract under Exemption 6 of the FOIA. Therefore, the Appeal will be denied.

[*/] In its Appeal, the Appellant states that release of the withheld information is required by statute. We were unable to determine what statute he was referring to. The statute he cited did not stand for this proposition.

It Is Therefore Ordered That:

(1) The Appeal filed by MGT Technical Consulting on April 4, 2007, Case No. TFA-0199, is hereby denied.

(2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provision of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought either in the district where the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia.

William M. Schwartz
Senior FOIA Official
Office of Hearings and Appeals

Date: April 18, 2007